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1979

# Dixie Roblek LeBreton v. Thomas Edward LeBreton : Brief of Respondent

Utah Supreme Court

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Thomas P. Vuyk; Attorney for Plaintiff and Respondent;

Don Blackham; Attorneys for Defendant and Appellant;

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON, )

Plaintiff and )  
Respondent, )

-VS-

THOMAS EDWARD LeBRETON, )

Defendant and )  
Appellant. )

Case No. 12000

RESPONDENT'S BRIEF

\*\*\*\*\*

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FEB 21

Clerk, Supreme Court

IN THE SUPREME COURT  
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,           )  
                                  Plaintiff and        )  
                                  Respondent,            )

Case No. 15923

-vs-

                                  )  
THOMAS EDWARD LeBRETON,         )  
                                  Defendant and        )  
                                  Appellant.            )

RESPONDENT'S BRIEF

\*\*\*\*\*

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,	)	
Plaintiff and	)	
Respondent	)	
	)	Case No. 15923
-vs-	)	
	)	
THOMAS EDWARD LeBRETON,	)	
Defendant and	)	
Appellant	)	

RESPONDENT'S BRIEF

\*\*\*\*\*

APPEAL FROM A JUDGMENT OF THE  
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
THE HONORABLE DAVID K. WINDER, DISTRICT JUDGE

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

DIXIE ROBLEK LeBRETON,	)	
Plaintiff and	)	
Respondent,	)	Case No. 15923
-vs-	)	
	)	
THOMAS EDWARD LeBRETON,	)	
Defendant and	)	
Appellant.	)	

RESPONDENT'S BRIEF

STATEMENT OF NATURE OF CASE

Appellant brought Order to Show Cause against Respondent to enforce sale of real property and divide proceeds derived from the sale of the real property pursuant to the terms of a Divorce Decree in which Respondent and Appellant were parties.

DISPOSITION IN THE LOWER COURT

The appellant's Order To Show Cause was heard by the Honorable David K. Winder, Third Judicial District Court in and for Salt Lake County. The Honorable Judge Winder after hearing the evidence ruled that the Divorce Decree specified that the equity which was to be divided between the parties

was as of the date of the divorce. The Appellant filed the Appeal to reverse the Order.

#### RELIEF SOUGHT BY RESPONDENT ON APPEAL

Respondent, Dixie Roblek LeBreton, seeks an Order upholding the Order of the trial court in this matter, payment of respondent's costs incurred herein including a reasonable attorney's fee.

#### STATEMENT OF FACTS

On April 28, 1969, the parties appeared before Aldon J. Anderson, Judge of the above-entitled court and after discussions between the parties outside the hearing of the court a stipulation was agreed to by the parties and a Divorce Decree was granted. The real property of the parties, a home located at 6723 South 2435 East, Salt Lake City, Utah was awarded to the Plaintiff with the stipulation and understanding that it would be sold upon the occurrence of one of three happenings. The remarriage of the Plaintiff, the sale by the Plaintiff or the youngest child reaching the age of majority. After the statement of these items it was then agreed that the house would be sold after one of the happenings and the equity as of the date of the divorce would be divided equally among the parties. It was further stipulated that the Plaintiff would receive credit for all of the payments that she made on the house during the time she had possession of the home.

The Findings of Fact and Conclusions of Law were prepared by the Plaintiff's attorney and submitted to the Defendant's attorney for review, signed by the Judge and the Decree was duly granted. In 1976 the Appellant filed an Affidavit In Support Of Order To Show Cause seeking to have the real property sold and one-half of the equity distributed to him. A hearing was set up with Judge Crofts but the matter was continued.

In June of 1977, Appellant again filed an Affidavit In Support Of Order To Show Cause for the same purposes and a hearing was held April 14, 1978. At this hearing the court determined the validity of the statement which follows:

"With regard to the house, it will be sold upon her remarriage or when the home is no longer needed for the minor children, at which time the home will be sold and the equity as of the date of this divorce will be divided equally among the parties with the further stipulation that the Plaintiff shall have all of the principal payments made by her after the date of the divorce before the costs of sale and then the remaining equity will be divided equally."

The court indicated that "the equity as of the date of this divorce has got to tip the balance and I think that it is what we are talking about. That is what I hold, is that it was the equity as of the date of the divorce."  
(R page 27 line 13).



## ARGUMENT

### Point 1

THE TRIAL COURT INTERPRETED  
CORRECTLY THE LANGUAGE OF THE  
DECREE OF DIVORCE AS WAS INTENDED BY THE PARTIES.

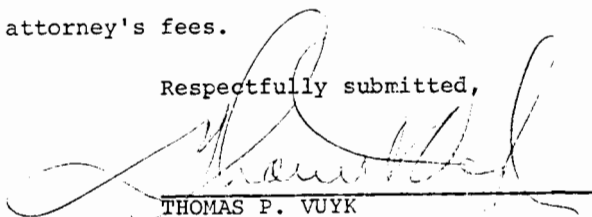
As has been stated, the interpretation of the language of the Decree of Divorce was the focal point in the case at bar. The court indicated that the testimony of both parties would be at a standoff and that the language "the home will be sold and the equity as of the date of this divorce will be divided equally among the parties" could have no relevant meaning except to be interpreted as meaning that the equity was to be as of the date of divorce. The determination that the Plaintiff was to be given credit for the principal payments would have protected her if the property had gone down or up since that date. The court has held in Mitchell vs. Mitchell 527, P. 2d 1359 that the burden is on the Appellant to prove that evidence clearly preponderates against the findings as made in a divorce proceedings. Judge Winder clearly stated the position of the parties and clearly indicated that the language in the Findings of Fact and Conclusions of Law and Divorce Decree could have no other meaning than that it was to be the equity as of the date of the original Divorce Decree. The Appellant now wishes to alter the clear meaning of that by indicating that it was to be equity divided at the time of the sale.

It should be noted that the Plaintiff remarried in 1971 and the Defendant made no demand for sale until 1976, taking full benefit of all of the inflationary trends of the property market. The court in analyzing this gave the Defendant a higher equity value than that of the date of the divorce because of the delay in the hearing and so Appellant benefited by that greater amount.

#### CONCLUSION

This court should uphold the Order entered by the trial court and accept the figure of \$35,000.00, the value of the home, which figure was used by the parties and which equity amount was tendered to the court by the Plaintiff herein. This would be in keeping with the real intent of the parties as agreed to and as entered into the Findings of Fact and Conclusions of Law and it is clear that the meaning can only be interpreted to show equity as of the date of the Divorce Decree and should uphold the decision of Judge Winder. Costs should be awarded to the Plaintiff herein, including attorney's fees.

Respectfully submitted,



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